

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JEFFREY MOORE,

Petitioner,

v.

Civil Action No. 5:06CV44
(STAMP)

DEPARTMENT OF CORRECTIONS,

Respondent.

**ORDER ACCEPTING AND ADOPTING REPORT
AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

On March 28, 2006, the United States District Court for the Southern District of West Virginia received a letter from the petitioner in this action seeking assistance to file a writ of mandamus against the West Virginia Department of Corrections regarding his confinement at the North Central Regional Jail. Because the North Central Regional Jail is located within the Northern District of West Virginia, the petitioner's letter was forwarded to this Court. On June 12, 2006, United States Magistrate Judge John S. Kaull entered an order to show cause after finding that the petitioner had neither paid a \$350.00 filing fee nor filed the forms necessary for this Court to determine his eligibility to proceed in forma pauperis. On June 29, 2006, the magistrate judge entered a report and recommendation finding that the petitioner had not responded to the Court's show cause order and recommending that this case be dismissed without prejudice for failure to prosecute. After review of the record, this Court agrees with the magistrate judge that the petitioner has failed to

prosecute his action by failing to pay the requisite filing fee or file the forms necessary to proceed within the time frame established by the Local Rules and the magistrate judge's show cause order. In addition, this Court notes that the petitioner has failed to file any objection to the magistrate judge's report and recommendation. Accordingly, the above-styled civil action is DISMISSED WITHOUT PREJUDICE for failure to prosecute. This Court also finds that because the petitioner has failed to timely file an objection to the magistrate judge's report and recommendation, he has waived his right to appeal from a judgment of this Court based on the recommendation. 28 U.S.C. § 636(b)(1); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: July 24, 2006

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE